IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

CHOON'S DESIGN LLC,
a Michigan limited liability company,

Plaintiff

Case No.:

v.

ZENACON, LLC,
a Florida limited liability company, and
STEVEN VERONA, an individual,

Defendants

COMPLAINT & JURY DEMAND

NOW COMES Plaintiff Choon's Design LLC ("Choon"), by and through its attorneys, Carlson, Gaskey & Olds, P.C., and for its Complaint against Defendants Zenacon, LLC ("Zenacon") and Steven Verona (collectively "Defendants") states as follows:

PARTIES

1. Choon is a Michigan limited liability company having its primary place of business at 48813 West Road, Wixom, MI 48393.

2. Zenacon is a Florida limited liability company with its primary place of business at 1111 Lincoln Road 4th Floor, Miami Beach, FL 33139.

3. Steven Verona is an individual having an address at 1111 Lincoln Road 4th Floor, Miami Beach, FL 33139.

JURISDICTION AND VENUE

4. This Court has original subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §1331 (federal question), §1332 (diversity), §1338 (patents), and 28 U.S.C. §1367 (supplemental jurisdiction).

5. Zenacon is subject to personal jurisdiction in this Court. In particular, this Court has personal jurisdiction over Zenacon because Zenacon has engaged in continuous, systematic and substantial activities within this judicial district, including the marketing and sales of products in this judicial district. Furthermore, upon information and belief, this Court has personal jurisdiction over Zenacon in this case because Zenacon has committed acts giving rise to Choon's claims within and directed to this judicial district. For instance, Zenacon has sold and shipped products to customers located in this judicial district. Steven Verona is subject to jurisdiction in this Court for the same reasons as Zenacon by virtue of the fact that he is the owner of Zenacon, which is simply his alter ego, and he owns and controls the domain names that are alleged to be infringing Choon's federally registered trademark.

6. Venue in this Court is proper pursuant to 28 U.S.C. §1391(b) and (c) and 28 U.S.C. §1400(b).

BACKGROUND

7. In late 2011, Choon introduced its Rainbow Loom product – a loom designed to be used with rubber bands to form links for making bracelets, necklaces, and even bags and other items – to the market ("the Rainbow Loom").

8. Choon introduced the Rainbow Loom by selectively placing it in specialty toy and craft stores. Choon did not initially sell the product to any retail chains – although it does now.

9. Notwithstanding, the Rainbow Loom product was, from the get go, received with great fanfare and accomplished almost immediate and monumental success – even without any relationships with retail chains.

10. The Today show featured Choon's Rainbow Loom as the "Summer's hottest craft craze" in a story aired August 15, 2013.

11. In an article dated July 19, 2013 (attached as **Exhibit A**), one store owner noted "[w]e are selling the Rainbow Loom like crazy!" The article further notes that the Rainbow Loom is "[t]he summer obsession … [and] … is flying off shelves so quickly that stores can't keep them in stock for long." *Id.* The popularity of the Rainbow Loom has "'spread like wildfire throughout the country,' especially with kids 5 to 15." *Id.*

12. Since its introduction into the market less, Choon has sold more than one million Rainbow Looms. Of course, Choon has also sold large volumes of other complementary products that are used with the Rainbow Loom such as rubber bands and c-clips (which are used to hold the two ends of a necklace or bracelet together). This tremendous success has led to numerous copycats trying to capitalize on Choon's hard work.

13. Choon owns and uses U.S. Trademark Registration No. 4345796 for the RAINBOW LOOM mark and uses this mark in connection with its Rainbow Loom products. A copy of this registration has been attached as **Exhibit B**.

14. After taking note of Choon's great success, Zenacon, and its owner Steven Verona, decided to take action, producing their own loom kit, the Fun Loom, which came with the loom, rubber bands, and c-clips, among other things. Zenacon also sold the rubber bands and c-clips separately and advertises them for use with its looms as well as with Choon's Rainbow Loom. (**Exhibit C**.)

15. The c-clips sold with Choon's Rainbow Loom have a unique and non-functional "c" shaped design, creating a distinctive look and feel for the clip used to connect rubber bands.

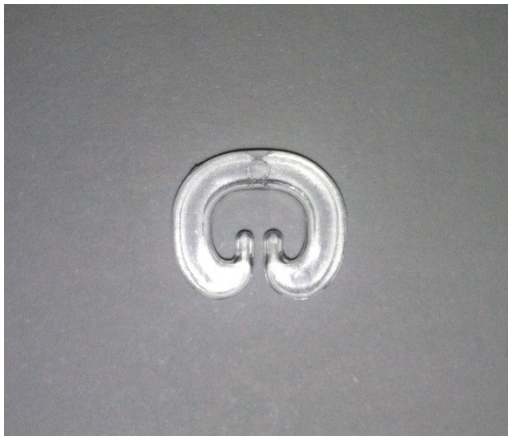
16. Choon exclusively uses this trade dress design for the c-clips that it sells with the Rainbow Loom.

17. Choon's c-clip trade dress is unique, and in a world where rubber brand bracelets and necklaces are becoming extremely popular, it is the clasp that distinguishes various brands of looms and/or loom kits.

18. A comparison of Zenacon's and Choon's c-clips, showing how Zenacon copied Choon's distinctive trade dress, is shown below:

Choon's C-Clip

Zenacon's C-Clip



19. Zenacon sold its Fun Loom through various channels, including its websites – which were accessible through various domain names.

20. At the time Zenacon introduced and sold the Fun Loom, it also offered Choon's Rainbow Loom product for sale on its website. (See screenshot at **Exhibit D.**)

21. Although Choon had not sold any looms to Zenacon, nor did it provide Zenacon with authority to sell its looms, Zenacon still made the representation that it could sell Choon's Rainbow Looms.

22. Steven Verona owns the following domain names and Zenacon offered and/or offers its products for sale at these websites: www.rainbowloomplus.com, www.rainbow-loom.com, www.rainbowloombands.com, and www.rainbowlooms.com. Each of these domain names utilizes Choon's federally registered RAINBOW LOOM mark.

23. Zenacon also sells its products through its website www.funlooms.com.

24. Even worse, Zenacon is using Choon's promotional materials to advertise and sell its own loom product. For example, Fun Loom posted the photograph below on its Facebook page. Not only is this a photo taken directly from Choon's website and product packaging, but the photo actually includes the hands/arms of the owner of Choon's wife and daughters.

25. Defendants' use of Choon's RAINBOW LOOM mark, or confusingly similar variations thereof, as domain names for websites to sell similar products without Choon's permission constitutes a use in commerce and a violation of the exclusive rights granted to Choon under 15 U.S.C. § 1114, which prohibits any person without the consent of the registrant to use the mark or colorable imitation "in connection with the sale, offering for sale, distribution or advertising of any goods in connection with which such use is likely to cause confusion."

26. Similarly, Defendants' use of Choon's RAINBOW LOOM mark, or confusingly similar variations thereof, as domain names for websites to sell similar products without Choon's

permission constitutes a violation by Defendants of 15 U.S.C. § 1125, which prohibits any person from causing "confusion or to cause mistake or to deceive as to the affiliation, connection or association of such person with another person as to the origin, sponsorship or approval of his or her goods, services, or commercial activities by another person."

27. Choon also owns a U.S. Patent that covers its Rainbow Loom.

28. Specifically, on July 16, 2013, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 8,485,565 ("the '565 patent"), entitled "Brunnian Link Making Device and Kit." A true and correct copy of the '565 patent is attached hereto as **Exhibit E**.

29. The '565 patent names Cheong Choon Ng as inventor.

30. Choon is the owner by assignment of all right, title and interest in the '565 patent.

31. The '565 patent generally relates to, *inter alia*, a novel method and device for creating a linked item.

32. Zenacon's Fun Loom infringes one or more of the claims of Choon's '565 patent.

COUNT I - ZENACON'S AND STEVEN VERONA'S DIRECT INFRINGEMENT OF THE '565 PATENT

33. Choon incorporates and re-alleges Paragraphs 1 through 32 as each were fully set forth herein.

34. The '565 patent remains valid, enforceable and unexpired.

35. Upon information and belief, Zenacon and Steven Verona are directly infringing and have directly infringed the '565 patent, including, without limitation, by making, using, selling, offering for sale, and/or importing, without license or authority, the Fun Loom which is covered by the '565 patent.

36. The Fun Loom falls within the scope of one or more claims of the '565 patent. Upon information and belief, Zenacon and Steven Verona directly infringe at least claims 1 and 6-18 of the '565 patent.

37. Upon information and belief, Zenacon and Steven Verona have actual knowledge of the '565 patent and knowledge of their infringement of the '565 patent.

38. Upon information and belief, Zenacon and Steven Verona's infringement has been and continues to be willful and deliberate.

39. As a result of Zenacon's and Steven Verona's infringement, Choon will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

COUNT II – ZENACON'S AND STEVEN VERONA'S CONTRIBUTORY INFRINGEMENT OF THE '565 PATENT

40. Choon incorporates and re-alleges Paragraphs 1 through 39 as each were fully set forth herein.

41. As described in Count I, the Fun Loom and the use of the Fun Loom fall within the scope of at least claims 1 and 6-18 of the '565 patent.

42. Upon information and belief, with knowledge of the '565 patent, Zenacon and Steven Verona have contributed to and continue to contribute to the infringement of the '565 patent under 35 U.S.C. § 271(c) by selling, offering to sell and/or importing the Fun Loom for use by their customers. Zenacon's and Steven Verona's customers directly infringe the '565 patent by using the Fun Loom to create linked items from elastic bands.

43. Upon information and belief, the Fun Loom is marketed and sold to customers who use it to create linked items for elastic bands. By following the instructions provided by Zenacon and Steven Verona, customers who use the Fun Loom directly infringe the '565 patent.

44. Upon information and belief, Zenacon's and Steven Verona's Fun Loom has no substantial non-infringing use for at least the reason that the Fun Loom can only be used to directly infringe the '565 patent. In other words, when Zenacon's and Steven Verona's instructions are followed, the Fun Loom is only used in an infringing manner, and is only advertised by Zenacon and Steven Verona for such an infringing use. See Instruction Manual attached as **Exhibit F**.

45. Upon information and belief, the accused Fun Loom also constitutes a material part of the invention of the '565 patent for at least the reason it is the very product used to practice the invention of the '565 patent.

46. Upon information and belief, Zenacon and Steven Verona know that the accused Fun Loom is especially made or especially adapted for use in an infringement of the '565 patent for at least the reason that the Fun Loom is advertised, sold, and/or offered for sale only to create linked items from elastic bands in a manner covered by the '565 patent.

47. Upon information and belief, Zenacon and Steven Verona have actual and/or constructive knowledge of the '565 patent and that Zenacon's and Steven Verona's customers' use of the accused Fun Loom directly infringes the claims of the '565 patent. Zenacon and Steven Verona have this knowledge by virtue of at least their receipt of Choon's letter to Zenacon dated June 14, 2013 wherein Choon identified the application which issued as the '565 patent to Zenacon and Steven Verona.

48. Upon information and belief, at the very least, Zenacon and Steven Verona were willfully blind as to the existence of the '565 patent, and therefore willfully blinded themselves to their customers' direct infringement of the '565 patent resulting from their use of the Fun Loom.

49. As a result of Zenacon's and Steven Verona's contributory infringement, Choon will suffer severe and irreparable harm, unless the infringement is enjoined by this Court, and has suffered substantial damages.

COUNT III – ZENACON'S AND STEVEN VERONA'S INDUCED INFRINGEMENT OF THE '565 PATENT

50. Choon incorporates and re-alleges Paragraphs 1 through 49 as each were fully set forth herein.

51. Upon information and belief, with knowledge of the '565 patent, Zenacon and Steven Verona have induced to and continue to induce to the infringement of the '565 patent under 35 U.S.C. § 271(b) by selling, offering to sell and/or importing the Fun Loom and its replacement rubber bands for use by its customers. Zenacon's and Steven Verona's customers directly infringe by using the Fun Loom and the replacement rubber bands to create linked items.

52. Zenacon and Steven Verona specifically intended their customers to infringe at least claims 1 and 6-18 of the '565 patent and knew that their customers' acts constituted infringement. Upon information and belief, despite a high likelihood that their actions would induce their customers' direct infringement of the '565 patent, Zenacon and Steven Verona marketed and sold the Fun Loom and replacement rubber bands to its customers to practice the claimed invention. Zenacon's and Steven Verona's customers directly infringe the '565 patent by creating linked articles from elastic bands by following the instructions provided with the Fun Loom Bracelet Kits and on Zenacon's website.

53. With regards to the rubber bands, Zenacon and Steven Verona induced people to infringe claims 6-18 of the '565 patent by selling their rubber bands for use on the Fun Loom.

54. Upon information and belief, Zenacon and Steven Verona knew that their customers' actions, when performed, would directly infringe the '565 patent. At the very least,

this is based on the fact that Choon sent Zenacon a letter dated June 14, 2013 indicating that such actions, as taken by Zenacon or anyone else, would constitute infringement.

55. Upon information and belief, Zenacon and Steven Verona have not made any changes to the Fun Loom despite their knowledge of the '565 patent.

56. Upon information and belief, Zenacon and Steven Verona have not made any changes to any of its publically available instructional materials, despite their knowledge of the '565 patent.

57. Upon information and belief, despite having actual knowledge of the '565 patent, Zenacon and Steven Verona continue to actively induce infringement of the '565 patent by continuing to promote the infringing Fun Loom and replacement rubber bands. Zenacon and Steven Verona intended their customers to directly infringe the '565 patent, or at the very least, were willfully blind to the fact that Zenacon's and Steven Verona's customers' use of the infringing Fun Loom and replacement rubber bands would directly infringe the '565 patent.

58. Upon information and belief, Zenacon and Steven Verona have actual knowledge of the '565 patent. Zenacon and Steven Verona have this knowledge by virtue of at least their receipt of Choon's letter to Zenacon dated June 14, 2013 wherein Choon identified the application which issued as the '565 patent to Zenacon and Steven Verona.

59. As a result of Zenacon's and Steven Verona's inducement of infringement, Choon will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

COUNT IV – TRADEMARK INFRINGEMENT
IN VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1114

60. Choon incorporates and re-alleges Paragraphs 1 through 59 as each were fully set forth herein.

61. Zenacon's and Steven Verona's conduct in using RAINBOW LOOM in connection with the "sale, offering for sale, distribution, or advertising," is causing confusion and constitute infringement of Choon's federally registered RAINBOW LOOM mark in violation of the Lanham Act 15 U.S.C. § 1114 and has cause substantial damage to Choon.

62. Specifically, Zenacon and Steven Verona used Choon's RAINBOW LOOM mark in connection with the above identified domain names and content included on the associated websites, including but not limited to its offer for sale of Choon's Rainbow Loom Bracelet Kit.

COUNT V – TRADEMARK INFRINGEMENT IN VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1125(a)

63. Choon incorporates and re-alleges Paragraphs 1 through 62 as each were fully set forth herein.

64. Zenacon's and Steven Verona's actions in using or causing confusion with Choon's RAINBOW LOOM mark to "cause confusion or to cause mistake or to deceive as to the affiliation, connection or association … as to the origin, sponsorship or approval" with Choon constitutes a violation of the Lanham Act, 15 U.S.C. § 1125(a), and has caused substantial damage to Choon.

COUNT VI – TRADE DRESS INFRINGEMENT IN VIOLATION OF THE LANHAM ACT, 15 U.S.C. §1125(a)

65. Choon incorporates and re-alleges Paragraphs 1 through 64 as each were fully set forth herein.

66. Zenacon's activities of making and selling c-clips embodying the trade dress from Choon's c-clips is prohibited by 15 U.S.C. §1125(a) and constitutes trade dress infringement.

67. Zenacon's acts complained of herein infringe Choon's rights in the trade dress, as they are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation,

connection, or association of Zenacon's products with Choon, or as to the origin, sponsorship or approval of Zenacon's goods, services or commercial activity in violation of Choon's rights, within the meaning of 15 U.S.C. § 1125(a).

68. Zenacon's acts complained of herein are willful and done with the intention of trading upon the valuable goodwill built up in the trade dress, or otherwise injuring Choon.

69. Zenacon's acts complained of herein jeopardize the entire goodwill symbolized by Choon's trade dress, causing serious and irreparable injury to Choon for which it has no adequate remedy at law.

COUNT VII - CYBERPIRACY

70. Choon incorporates and re-alleges Paragraphs 1 through 69 as each were fully set forth herein.

71. The RAINBOW LOOM mark is "famous" within the meaning of Section 43(c)(1) of the Lanham Act, 15 U.S.C. §1125(d).

72. The RAINBOW LOOM mark is distinctive, inherently or through acquired distinctiveness, within the meaning of Section 43(d) of the Lanham Act, 15 U.S.C. §1125(d).

73. Choon is the owner of the RAINBOW LOOM mark.

74. Choon has used and is using the RAINBOW LOOM mark for commercial purposes, including without limitation the Internet domain names www.rainbowloom.com, as well as on its Rainbow Loom products.

75. On information and belief, Steve Verona has registered and Zenacon has used the domain names www.rainbowloomplus.com, www.rainbow-loom.com, www.rainbowloombands.com, and www.rainbowlooms.com.

76. The domain names www.rainbowloomplus.com, www.rainbow-loom.com, www.rainbowloombands.com, and www.rainbowlooms.com were identical or confusingly similar to the RAINBOW LOOM mark at the time of registration.

77. The RAINBOW LOOM mark was famous at the time the domain names www.rainbowloomplus.com, www.rainbow-loom.com, www.rainbowloombands.com, and www.rainbowlooms.com were registered.

78. Steven Verona and Zenacon, either directly or through its agent, registered and subsequently used the domain names www.rainbowloomplus.com, www.rainbow-loom.com, www.rainbowloombands.com, and www.rainbowlooms.com with a bad faith intent to profit from famous marks owned by Choon, without reasonable grounds to believe that the use of the domain names were a fair use or otherwise lawful, and with the intent of diluting the RAINBOW LOOM mark and creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the site with the RAINBOW LOOM mark and Choon.

79. Steven Verona and Zenacon, either directly or through its agent, registered and has subsequently used the domain names www.rainbowloomplus.com, www.rainbow-loom.com, www.rainbowloombands.com, and www.rainbowlooms.com with a bad faith intent to profit from distinctive marks owned by Choon, without reasonable grounds to believe that the use of the domain names were a fair use or otherwise lawful, and with the intent of creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the site with the RAINBOW LOOM mark and Choon.

COUNT VIII – VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

80. Choon incorporates and re-alleges Paragraphs 1 through 79 as each were fully set forth herein.

81. Zenacon's and Steven Verona's acts complained of herein violate the Michigan Consumer Protection Act, M.C.L. § 445.903(1), as they constitute unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce.

82. Zenacon's and Steven Verona's unfair acts are willful, and have caused, and if not restrained by this Court, will continue to cause Choon serious and irreparable injury for which it has no adequate remedy at law.

COUNT IX – UNFAIR COMPETITION IN VIOLATION OF MICHIGAN COMMON LAW

83. Choon incorporates and re-alleges Paragraphs 1 through 82 as each were fully set forth herein.

84. Zenacon's and Steven Verona's acts complained of herein constitute unfair competition in violation of the common law of Michigan, as they are likely to cause confusion, or to cause mistake, or to deceive the affiliation, connection, or association of Zenacon's and Steven Verona's products with Choon's, or as to the origins, sponsorship or approval of Zenacon's and Steven Verona's goods, services or commercial activity in violation of Choon's rights.

85. Zenacon and Steven Verona have willfully engaged in acts of unfair competition.

86. Zenacon's and Steven Verona's acts of unfair competition have caused, and if not restrained by this Court, will continue to cause Choon serious and irreparable injury for which it has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Choon requests judgment in its favor against Zenacon and Steven Verona for the following relief:

A. An order adjudging that Zenacon and Steven Verona have infringed the '565 patent;

B. An order adjudging Zenacon and Steven Verona to have willfully infringed the '565 patent.

C. A preliminary and permanent injunction enjoining Zenacon, its officers, directors, agents, servants, employees and those persons in active concert or participation with Zenacon, and Steven Verona from directly or indirectly infringing the '565 patent in violation of 35 U.S.C. §271;

D. An award of damages adequate to compensate Choon for Zenacon's and Steven Verona's infringement of the '565 patent;

E. An award of damages adequate to compensate Choon for infringement including those damages provided for in 35 U.S.C. §154(d).

F. An order for a trebling of damages and/or exemplary damages because of Zenacon's and Steven Verona's willful infringement pursuant to 35 U.S.C. §284;

G. An order adjudging that this is an exceptional case;

H. An award to Choon of its attorney fees and its costs and expenses incurred in connection with this action pursuant to 35 U.S.C. §285 and as permitted under Choon's other claims;

I. A permanent injunction enjoining Defendants, their employees, agents, officers, directors, attorneys, representatives, successors, affiliates, parents, subsidiaries, licensees, and assigns, and all those in active concert or participation with any of them, from the following acts:

(a) using, attempting to use, or registering, on or in connection with any business or service, or the sale, offering for sale, distribution, advertising, promotion, labeling or packaging, of any service or any goods, or for any purpose whatsoever: (1) the RAINBOW LOOM mark, or any other name, mark or designation which colorably imitates or is confusingly similar to said name or mark, alone or in combination with any other mark(s), designation(s), word(s), term(s) and or design(s); the c-clip trade dress, and (3) any false description or representation or any other thing calculated or likely to cause confusion or mistake in the public mind or to deceive the public into the belief that Defendants or their products or services are connected to Choon or that Defendants' products and services come from or are approved or endorsed by Choon; and

(b) otherwise engaging in acts, either directly or through other entities, of infringement and unfair competition;

J. An order requiring Defendants to file with the Court and serve upon Plaintiff, within thirty (30) days after the entry of such order or judgment, a report in writing and under oath setting forth in detail the manner and form in which they have complied with the injunction;

K. A declaration that Defendants' acts of trademark infringement and unfair competition are knowing, willful and "exceptional" within the meaning of 15 U.S.C. §1117;

L. Enter judgment that Defendants have injured Choon's business reputation and diluted the distinctive quality of famous marks and trade dress in violation of 15 U.S.C. §1125(c)(1);

M. Enter judgment that Defendants have injured Bar's Products' business reputation and diluted the distinctive quality of famous marks and trade dress in violation of 15 U.S.C. § 1125(c)(1);

N. Enter judgment that Defendants, with bad faith intent to profit from Choon's RAINBOW LOOM mark, has registered, trafficked in, and used, a domain name identical, dilutive, or confusingly similar to Choon's RAINBOW LOOM mark in violation of 15 U.S.C. § 1125(d);

O. An order awarding to Choon actual damages and an accounting of Defendants' profits, including any statutory enhancements on account of the willful nature of Defendants' acts;

P. Award actual or statutory damages for Defendants' violation of 15 U.S.C. § 1125(d)(1) in an amount of not less than $1,000 and not more than $100,000 per domain name, as the court considers just, pursuant to 15 U.S.C. 1117(d);

Q. Enter an order pursuant to 15 U.S.C. § 1125(d)(IX)(ii)(c) that Defendants forfeit, cancel, or transfer the domain names www.rainbowloomplus.com, www.rainbow-loom.com, www.rainbowloombands.com, and www.rainbowlooms.comt to Choon.

R. Issue an order under 15 U.S.C. §1118 ordering that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of Defendants bearing the RAINBOW LOOM mark and any colorable imitations of such mark, shall be delivered and destroyed.

S. An award of prejudgment and post-judgment interest and costs of this action; and

T. Such other and further relief that this Court deems just and proper.

JURY DEMAND

Pursuant to Fed R. Civ. P. 38(b) and 5(d), Plaintiff demands a trial by jury for all issues so triable.

Dated: August 19, 2013

CARLSON, GASKEY & OLDS, P.C.

/s/ Brian S. Tobin
Theodore W. Olds, III (P42004)
John M. Siragusa (P62573)
Brian S. Tobin (P67621)
Carlson Gaskey & Olds, P.C.
400 W. Maple, Suite 350
Birmingham, Michigan 48009
Telephone: [redacted]
Facsimile: [redacted]
Email: [redacted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

CHOON'S DESIGN LLC,
a Michigan limited liability company,

Plaintiff

Case No.:

v.

LAROSE INDUSTRIES, LLC,
a New Jersey limited liability company, and
TOYS "R" US, INC,
a New Jersey corporation.

Defendants

COMPLAINT & JURY DEMAND

NOW COMES Plaintiff Choon's Design LLC ("Choon"), by and through its attorneys, Carlson, Gaskey & Olds, P.C., and for its Complaint against Defendants LaRose Industries, LLC ("LaRose") and Toys "R" Us, Inc ("Toys"R"Us) (collectively "Defendants") states as follows:

PARTIES

1. Choon is a Michigan limited liability company having its primary place of business at 48813 West Road, Wixom, MI 48393.

2. LaRose is a New Jersey limited liability company with its primary place of business at Building 5, 1578 Sussex Turnpike, Randolph New Jersey, 07869.

3. Toys"R"Us is a corporation with its primary place of business at One Geoffrey Way, Wayne, New Jersey 07470.

JURISDICTION AND VENUE

4. This Court has original subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §1331 (federal question), §1332 (diversity), and §1338 (patents).

5. LaRose and Toys"R"Us are subject to personal jurisdiction in this Court. In particular, this Court has personal jurisdiction over LaRose and Toys"R"Us because LaRose and Toys"R"Us have engaged in continuous, systematic and substantial activities within this judicial district, including the marketing and sales of products in this judicial district. Furthermore, upon information and belief, this Court has personal jurisdiction over LaRose and Toys"R"Us in this case because LaRose and Toys"R"Us have committed acts giving rise to Choon's claims within and directed to this judicial district.

6. Venue in this Court is proper pursuant to 28 U.S.C. §1391(b) and (c) and 28 U.S.C. §1400(b).

BACKGROUND

7. In late 2011, Choon introduced its Rainbow Loom product – a loom designed to be used with rubber bands to form links for making bracelets, necklaces, and even bags and other items – to the market ("the Rainbow Loom").

8. Choon introduced the Rainbow Loom by selectively placing it in specialty toy and craft stores. Choon did not initially sell the product to any retail chains – although it does now.

9. Notwithstanding, the Rainbow Loom product was, from the get go, received with great fanfare and accomplished almost immediate and monumental success – even without any relationships with retail chains.

10. The Today show featured Choon's Rainbow Loom as the "Summer's hottest craft craze" in a story aired August 15, 2013.

11. In an article dated July 19, 2013 (attached as **Exhibit A**), one store owner noted "[w]e are selling the Rainbow Loom like crazy!" The article further notes that the Rainbow Loom is "[t]he summer obsession … [and] … is flying off shelves so quickly that stores can't

keep them in stock for long." *Id.* The popularity of the Rainbow Loom has "'spread like wildfire throughout the country,' especially with kids 5 to 15." *Id.*

12. Since its introduction into the market, Choon has sold more than one million Rainbow Looms. Of course, Choon has also sold large volumes of other complementary products that are used with the Rainbow Loom such as rubber bands and c-clips (which are used to hold the two ends of a necklace or bracelet together). This tremendous success has led to numerous copycats trying to capitalize on Choon's hard work.

13. After taking note of Choon's great success, LaRose and Toys"R"Us, decided to take action, producing and selling their own loom kit, the cra-Z-loom bracelet maker, that includes a loom, rubber bands, and clips, among other things. LaRose and Toys"R"Us also sell the rubber bands separately (**Exhibit B**.)

14. LaRose and Toys"R"Us sell its cra-Z-loom through various channels, including Toys"R"Us's website.

15. LaRose sells the cra-Z-loom to Toys"R"Us who then sells it and replacement bands and clips through its website www.toysrus.com.

16. LaRose adverstises the cra-Z-loom through its Cra-Z-Art brand through television commercials and internet sites as being available only at Toys"R"Us.

17. Choon owns a U.S. Patent that covers its Rainbow Loom.

18. Specifically, on July 16, 2013, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 8,485,565 ("the '565 patent"), entitled "Brunnian Link Making Device and Kit." A true and correct copy of the '565 patent is attached hereto as **Exhibit C**.

19. The '565 patent names Cheong Choon Ng as inventor.

20. Choon is the owner by assignment of all right, title and interest in the '565 patent.

21. The '565 patent generally relates to, *inter alia*, a novel method and device for creating a linked item.

22. LaRose and Toys"R"Us's cra-Z-loom infringes one or more of the claims of Choon's '565 patent.

COUNT I - LAROSE AND TOYS"R"US'S DIRECT INFRINGEMENT OF THE '565 PATENT

23. Choon incorporates and re-alleges Paragraphs 1 through 22 as each were fully set forth herein.

24. The '565 patent remains valid, enforceable and unexpired.

25. Upon information and belief, LaRose and Toys"R"Us are directly infringing and have directly infringed the '565 patent, including, without limitation, by making, using, selling, offering for sale, and/or importing, without license or authority, its cra-Z-loom which is covered by the '565 patent.

26. The cra-Z-loom falls within the scope of one or more claims of the '565 patent. Upon information and belief, LaRose and Toys"R"Us directly infringes at least claims 1 and 6-18 of the '565 patent.

27. Upon information and belief, LaRose and Toys"R"Us's have actual knowledge of the '565 patent and knowledge of their infringement of the '565 patent. Toys"R"Us has this knowledge by virtue of at least its receipt of an email from Choon communicating grant of the '565 patent to a representative of Toys"R"Us, Jeff Osnato on July 26, 2013 (**Exhibit D**). Upon information and belief, this information was then conveyed by Toys"R"Us to LaRose. Upon information and belief, LaRose and Toys"R"Us's infringement has been and continues to be willful and deliberate.

28. As a result of LaRose and Toys"R"Us's infringement, Choon will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

COUNT II – LAROSE AND TOYS"R"US'S CONTRIBUTORY INFRINGEMENT OF THE '565 PATENT

29. Choon incorporates and re-alleges Paragraphs 1 through 28 as each were fully set forth herein.

30. As described in Count I, the cra-Z-loom and the use of the cra-Z-loom fall within the scope of at least claims 1 and 6-18 of the '565 patent.

31. Upon information and belief, with knowledge of the '565 patent, LaRose and Toys"R"Us have contributed to and continue to contribute to the infringement of the '565 patent under 35 U.S.C. § 271(c) by selling, offering to sell and/or importing the cra-Z-loom for use by their customers. LaRose and Toys"R"Us's customers directly infringe the '565 patent by using the Cra-Z-loom to create linked items from elastic bands.

32. Upon information and belief, the cra-Z-loom is marketed and sold to customers who use it to create linked items for elastic bands. By following the instructions provided by LaRose and Toys"R"Us, customers who use the cra-Z-loom directly infringe the '565 patent.

33. Upon information and belief, LaRose and Toys"R"Us's cra-Z-loom have no substantial non-infringing use for at least the reason that the cra-Z-loom can only be used to directly infringe the '565 patent. In other words, when LaRose and Toys"R"Us's instructions are followed, the cra-Z-loom is only used in an infringing manner, and is only advertised by LaRose and Toys"R"Us for such an infringing use. See Instruction Manual attached as **Exhibit E**.

34. Upon information and belief, the accused Cra-Z-loom also constitutes a material part of the invention of the ‘565 patent for at least the reason it is the very product used to practice the invention of the ‘565 patent.

35. Upon information and belief, LaRose and Toys”R”Us know that the accused Cra-Z-loom is especially made or especially adapted for use in an infringement of the ‘565 patent for at least the reason that the Cra-Z-loom is advertised, sold, and/or offered for sale only to create linked items from elastic bands in a manner covered by the ‘565 patent.

36. Upon information and belief, LaRose and Toys”R”Us have actual and/or constructive knowledge of the ‘565 patent and that LaRose and Toys”R”Us’s customers’ use of the accused Cra-Z-loom directly infringes the claims of the ‘565 patent. Toys”R”Us has this knowledge by virtue of at least its receipt of an email from Choon communicating grant of the ‘565 patent to a representative of Toys”R”Us, Jeff Osnato on July 26, 2013 (**Exhibit D**). Upon information and belief, this information was then conveyed by Toys”R”Us to LaRose.Upon information and belief, at the very least, LaRose and Toys”R”Us were willfully blind as to the existence of the ‘565 patent, and therefore willfully blinded themselves to its customers’ direct infringement of the ‘565 patent resulting from their use of the Cra-Z-loom.

37. As a result of LaRose and Toys”R”Us’s contributory infringement, Choon will suffer severe and irreparable harm, unless the infringement is enjoined by this Court, and has suffered substantial damages.

COUNT III – LAROSE AND TOYS”R”US’S INDUCED INFRINGEMENT OF THE ‘565 PATENT

38. Choon incorporates and re-alleges Paragraphs 1 through 37 as each were fully set forth herein.

39. Upon information and belief, with knowledge of the ‘565 patent, LaRose and Toys”R”Us have induced to and continue to induce to the infringement of the ‘565 patent under 35 U.S.C. § 271(b) by selling, offering to sell and/or importing the Cra-Z-loom and its replacement rubber bands for use by their customers. LaRose and Toys”R”Us’s customers directly infringe by using the Cra-Z-loom and the replacement rubber bands to create linked items.

40. LaRose and Toys”R”Us specifically intended their customers to infringe at least claims 1 and 6-18 of the ‘565 patent and knew that their customers’ acts constituted infringement. Upon information and belief, despite a high likelihood that its actions would induce its customers’ direct infringement of the ‘565 patent, LaRose and Toys”R”Us marketed and sold the Cra-Z-loom and replacement rubber bands to their customers to practice the claimed invention. LaRose and Toys”R”Us’s customers directly infringe the ‘565 patent by creating linked articles from elastic bands by following the instructions provided with the Cra-Z-loom Bracelet Kits and on LaRose and Toys”R”Us’s website.

41. With regards to the rubber bands, LaRose and Toys”R”Us induced people to infringe claims 6-18 of the ‘565 patent by selling their rubber bands for use on its Cra-Z-loom.

42. Upon information and belief, LaRose and Toys”R”Us knew that their customers’ actions, when performed, would directly infringe the ‘565 patent.

43. Upon information and belief, LaRose and Toys”R”Us have not made any changes to the Cra-Z-loom despite their knowledge of the ‘565 patent.

44. Upon information and belief, LaRose and Toys”R”Us have not made any changes to any of its publically available instructional materials, despite their knowledge of the ‘565 patent.

45. Upon information and belief, despite having actual knowledge of the '565 patent, LaRose and Toys"R"Us continue to actively induce infringement of the '565 patent by continuing to promote the infringing Cra-Z-loom and replacement rubber bands. LaRose and Toys"R"Us intended their customers to directly infringe the '565 patent, or at the very least, were willfully blind to the fact that LaRose and Toys"R"Us's customers' use of the infringing Cra-Z-loom and replacement rubber bands would directly infringe the '565 patent.

46. Upon information and belief, LaRose and Toys"R"Us have actual knowledge of the '565 patent. Toys"R"Us has this knowledge by virtue of at least its receipt of an email from Choon communicating grant of the '565 patent to a representative of Toys"R"Us, Jeff Osnato on July 26, 2013 (**Exhibit D**). Upon information and belief, this information was then conveyed by Toys"R"Us to LaRose.

47. As a result of LaRose and Toys"R"Us's inducement of infringement, Choon will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

PRAYER FOR RELIEF

WHEREFORE, Choon requests judgment in its favor against LaRose and Toys"R"Us for the following relief:

A. An order adjudging that LaRose and Toys"R"Us have infringed the '565 patent;

B. An order adjudging LaRose and Toys"R"Us to have willfully infringed the '565 patent;

C. A preliminary and permanent injunction enjoining LaRose and Toys"R"Us, its officers, directors, agents, servants, employees and those persons in active concert

or participation with LaRose and Toys"R"Us, from directly or indirectly infringing the '565 patent in violation of 35 U.S.C. §271;

D. An award of damages adequate to compensate Choon for LaRose's and Toys"R"Us's infringement of the '565 patent;

E. An award of damages adequate to compensate Choon for infringement including those damages provided for in 35 U.S.C. §154(d);

F. An order for a trebling of damages and/or exemplary damages because of LaRose's and Toys"R"Us's willful infringement pursuant to 35 U.S.C. §284;

G. An order adjudging that this is an exceptional case;

H. An award to Choon of its attorney fees and its costs and expenses incurred in connection with this action pursuant to 35 U.S.C. §285; and

I. Such other and further relief that this Court deems just and proper.

JURY DEMAND

Pursuant to Fed R. Civ. P. 38(b) and 5(d), Plaintiff demands a trial by jury for all issues so triable.

Dated: August 19, 2013 CARLSON, GASKEY & OLDS, P.C.

/s/ Brian S. Tobin

Theodore W. Olds, III (P42004)
John M. Siragusa (P62573)
Brian S. Tobin (P67621)
Carlson Gaskey & Olds, P.C.
400 W. Maple, Suite 350
Birmingham, Michigan 48009
Telephone: [redacted]
Facsimile:
Email: [redacted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LAROSE INDUSTRIES, LLC d/b/a CRA-Z-ART, Plaintiff, v. CHOON'S DESIGN LLC, Defendant.	Civil Action No. _____ **COMPLAINT FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT AND FOR TORTIOUS INTERFERENCE**

1. Plaintiff LaRose Industries, LLC d/b/a Cra-Z-Art (hereinafter, "LaRose") files this Complaint for Declaratory Judgment of non-infringement pursuant to the U.S. Patent Act, 35 U.S.C. §1 et seq., and for tortious interference. LaRose alleges as follows:

PARTIES

2. LaRose is a limited liability company organized and existing under the laws of the State of New Jersey and having a principal place of business at 1578 Sussex Turnpike, Building 5, Randolph, New Jersey 07869.

3. Upon information and belief, Defendant Choon's Design LLC (hereinafter, "Choon's") is a limited liability company organized and existing under the laws of the State of Michigan and having a principal place of business at 48813 West Road, Wixom, Michigan 48393.

4. Upon information and belief, Choon's sells and offers for sale products in New Jersey, namely, Rainbow Loom rubber band bracelet making kits.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court because this action arises under federal law, namely, 35 U.S.C. §1 et seq. (the "Patent Act"). This Court has jurisdiction over this action under 28 U.S.C. §1331 (federal question), 28 U.S.C. §1338 (patent), and 28 U.S.C. §2201 (Declaratory Judgment Act). This Court has supplemental subject matter jurisdiction over all state law claims.

6. This Court has personal jurisdiction over Choon's because Choon's, upon information and belief, conducts business in the State of New Jersey and within this district, including selling and offering for sale products in New Jersey, and the injury inflicted on LaRose by Choon's occurred within the State of New Jersey.

7. Venue is proper in this district under 28 U.S.C. §§1391(b) and 1391(c).

8. An actual case or controversy has arisen between the parties. Choon's has filed a Complaint against LaRose in the United States District Court for the Eastern District of Michigan, Case No. 2:13-cv-13569-TGB-MKM, alleging that its manufacture, use, sale. offer to sell, and/or importation of LaRose's products, namely, LaRose's CRA-Z-LOOM™ bracelet makers, in the United States infringes Choon's U.S. Patent No. 8,485,565 B2. Choon's actions and statements have resulted in actual injury to LaRose.

CASE AND CONTROVERSY

9. Based upon the facts below, there is now existing an actual and justiciable controversy within the jurisdiction of this Court, and with respect to which LaRose is entitled to have a declaration of its rights pursuant to the Declaratory Judgment Act, §28 U.S.C. §2201 and 2202.

FACTS

10. LaRose is the creator, developer and manufacturer of a loom for making bracelets under the brand CRA-Z-LOOM™ (hereinafter, the "Cra-Z-Loom product").

11. LaRose began development of the Cra-Z-Loom product in the year 2013, and independently created such product.

12. The concept/idea of looms for making jewelry and similar items is not novel to or unique with Choon's, as several third parties have marketed and sold them for many years.

13. LaRose began marketing and selling the Cra-Z-Loom product in the year 2013.

14. Pursuant to a contractual agreement between LaRose and Toys "R" Us-Delaware, Inc. ("TRU"), LaRose began supplying to TRU the Cra-Z-Loom product for sale in its stores, including New Jersey-based Toys "R" Us stores.

15. Upon information and belief, Choon's is the owner of U.S. Patent No. 8.485,565 B2 issued on July 16, 2013 and entitled "Brunnian Link Making Device and Kit" (the "Choon's Patent"), a true and correct copy of which is attached hereto as Exhibit A.

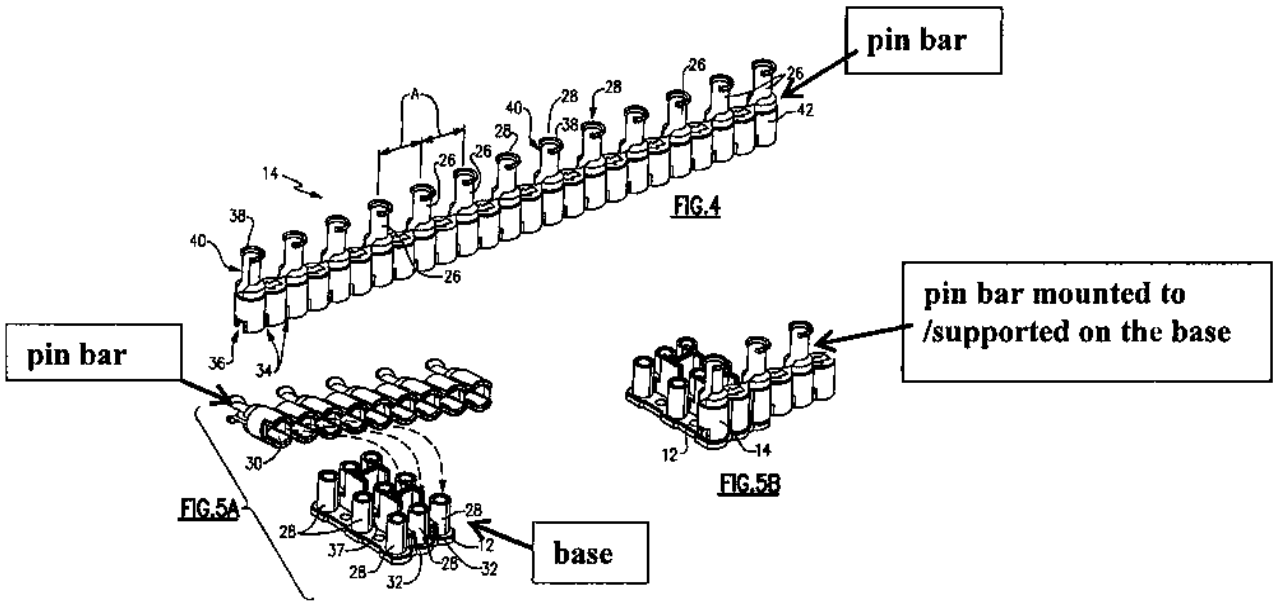
16. With reference to Exhibit A, the Choon's Patent claims priority to U.S. Provisional Patent Application No. 61/410,399 filed on November 5, 2010 entitled "Brunnian Link Making Device and Kit" (the "Choon's Provisional Application"), a true and correct copy of which is attached hereto as Exhibit B.

17. Without prior warning or notice, Choon's filed a Complaint on August 19, 2013 in the Unites States District Court for the Eastern District of Michigan against LaRose, Case No. 2:13-cv-13569-TGB-MKM, alleging that the manufacture, use, sale, offer for sale and/or importation of the Cra-Z-Loom product by LaRose directly and indirectly infringes the Choon's Patent.

18. The Choon's Patent includes 18 claims, two of which are independent claims directed, respectively, to a kit (Claim 1) and a method of creating a "linked item" (Claim 12). Among other features, Claim 1 of the Choon's Patent recites that the claimed kit comprises "a base" and "at least one pin bar supported on the base ...." Claim 12 recites a method step of "supporting at least one pin bar...to a base to define a desired relative special relationship between at least two adjacent pins...."

19. The Choon's Provisional Application contains an independent product claim that recites components which are similar to the components recited in Claim 1 of the Choon's Patent (see Exhibit B, page 6, lines 3-11). For instance, Claim 1 of the Choon's Provisional Application recites "a base template 12" and the "at least one pin bar 14." The reference numbers "12" and "14" correspond to the reference numbers appearing in the specification and drawings of the Choon's Provisional Application (see Figures 1 and 5A through 5C and the accompanying text of the Choon's Provisional Application). With particular reference to Figures 1 and 5A through 5C of the Choon's Provisional Application, it can be seen that the base template 12 and pin bars 14 are distinct and separate components.

20. The Choon's Patent itself specifically discloses that the base and the pin bar are distinct and separate components, as shown, for example, by Figures 4 through 5B of the Choon's Patent, such figures being reproduced below:



21. Thus, the pin bars and the bases disclosed within the Choon's Patent are attached removably to one another so as to provide "varying mounting configurations for the pin bars," as described therein.

22. It is clear from the foregoing that the "base" and the "pin bar" recited in the claims of the Choon's Patent are separate and distinct components, and that both components are necessary to the kit recited in Claims 1-11 and the method recited in Claims 12-18 of the Choon's Patent. It is also clear from the wording of Claim 12 that the base and the pin bar must be manipulated by a user to arrange pins relative to each other, thereby creating a "special relationship" between adjacent pins.

23. Choon's has asserted that the Choon's Patent "covers its Rainbow Loom" product, meaning that the claims of the Choon's Patent "read on" the Rainbow Loom product. With this in mind, Choon's website, www.rainbowloom.com, includes several instructional videos for using the Rainbow Loom product, which show at least two ways of removing a base from the pin bars, namely, (1) using a "hook" device that accompanies the Rainbow Loom

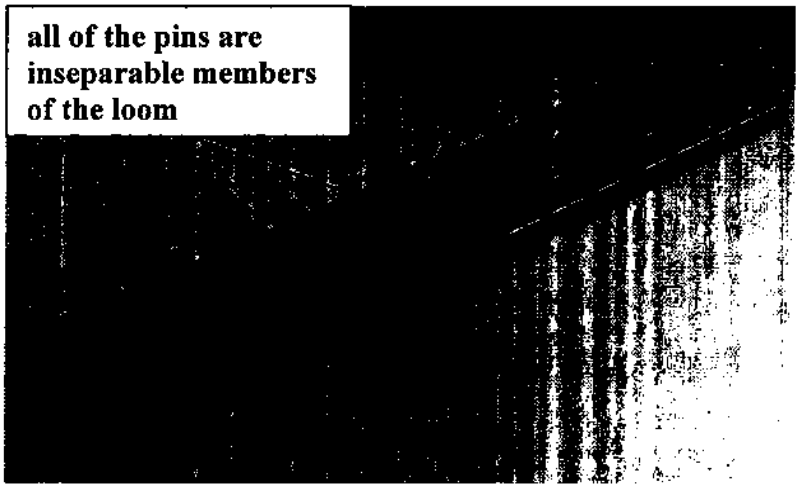
product, or (2) placing the base within a space between a pair of books and pushing bases off of the pin bars using a screwdriver. Screenshots of the foregoing videos are attached hereto as Exhibit C.

24. There is no disclosure, teaching, or suggestion within the Choon's Patent that the pin bar is an integral and inseparable member of the base.

25. Accordingly, it is, once again, clear that the claims of the Choon's Patent call for the base and the pin bar as being separate and distinct components, and that both components are necessary to the claimed kit and method.

26. In view of the foregoing, Choon's knew or should have known that the claims of the Choon's Patent call for the base and the pin bar as being separate and distinct components.

27. On the contrary, the Cra-Z-Loom product is a single unit, with the pins being integral and inseparable members of the loom. In other words, a user cannot arrange the pins relative to each other because the pins are in predetermined, fixed positions on the loom, rather than creating "special relationships." A photo of the Cra-Z-Loom product is reproduced below:



28. In view of the foregoing, the Cra-Z-Loom product does not infringe independent kit Claim 1 or independent method Claim 12 of the Choon's Patent. Further, since the independent kit claim and the independent method claim would not be infringed, it follows that

none of the other claims in the Choon's Patent (i.e., dependent kit Claims 2-11, and dependent method Claims 13-18) would be infringed, since they are all dependent claims of Claim 1 or Claim 12.

29. LaRose has not infringed, and does not infringe, either directly or indirectly, the Choon's Patent.

30. On or about August 20, 2013, Mr. Cheong Choon Ng, who upon information and belief is the principal of Choon's, sent an email to Mr. Jeff Osnato, a Manger of Product Development of TRU, notifying him that "we have now filed suit against both Toys "R" Us and LaRose for infringing our patent." Mr. Choon further stated that "My attorneys have been instructed to move for an injunction against your further sales, beginning in one week, unless we receive a positive response from Toys"R"Us."

31. On or about August 20, 2013, Mr. Choon then sent a virtually identical email to Mr. Joe Parker, a Senior Buyer of TRU.

32. Choon's patent infringement lawsuit and threats for filing injunctive relief have caused LaRose to be uncertain of its commercial activities and rights regarding the Cra-Z-Loom product.

COUNT I (DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF PATENT UNDER THE PATENT ACT, 35 U.S.C. §101 ET SEQ.)

33. LaRose repeats and realleges paragraphs 1 through 32 of the Complaint as if fully set forth herein.

34. Choon's has claimed that the manufacture, use, sale, offer to sell, and/or importation of the Cra-Z-Loom product by LaRose constitute patent infringement, and has filed a lawsuit against LaRose on this basis.

35. An actual, present, and justiciable controversy has arisen between the parties concerning LaRose's right to manufacture, use, distribute and sell the Cra-Z-Loom product in the United States, and is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

36. LaRose seeks declaratory judgment from this Court that the Cra-Z-Loom product does not infringe the Choon's Patent.

COUNT II (TORTIOUS INTERFERENCE WITH CONTRACT)

37. LaRose repeats and realleges paragraphs 1 through 36 of the Complaint as if fully set forth herein.

38. LaRose has a valid contract with TRU to market and sell the Cra-Z-Loom product in TRU's stores.

39. Choon's was aware of this contract between LaRose and TRU.

40. Choon's is not a party to this contract.

41. Choon's has attempted to intentionally induce TRU not to perform the contract.

42. Choon's acted without justification or excuse in attempting to induce TRU to not perform the contract.

43. As evidenced by Choon's communications with TRU, Choon's unreasonably and actually interfered with the contract between LaRose and TRU.

44. Despite the fact that Choon's knew or should have known that the claims of the Choon's Patent call for the base and the pin bar as being separate and distinct components, Choon's nevertheless filed the aforesaid patent infringement lawsuit against LaRose and tortiously interfered with the contract between LaRose and TRU.

45. But for Choon's tortious interference, LaRose's performance of its contract with TRU is in jeopardy.

46. As a result of Choon's actions, LaRose has suffered damages in that, among other things, its fulfillment of and compensation for the contract is in jeopardy.

47. Choon's actions were not motivated by a legitimate business purpose, but were instead maliciously calculated to procure a breach of contract, and were otherwise fraudulent, dishonest and illegal.

48. Choon's actions constitute tortious interference with contract under New Jersey law.

PRAYER FOR RELIEF

WHEREFORE, LaRose requests that this Court enter a judgment:

1. Declaring that the manufacture, use, sale, offer to sell and/or importation of the Cra-Z-Loom product does not infringe the Choon's Patent.

2. Awarding to LaRose its actual damages suffered as a result of Choon's tortious conduct;

3. Awarding to LaRose punitive damages as a result of Choon's malicious conduct;

4. Awarding LaRose its reasonable costs and attorneys' fees; and

5. Granting LaRose such other relief as the Court deems just and proper.

Dated: Florham Park, New Jersey
August 28, 2013

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: s/ Ralph W. Selitto, Jr.
Ralph W. Selitto, Jr.
Joseph Agostino

William Stroever
200 Park Avenue
Florham Park, NJ 07932
Tel. [redacted]
Fax [redacted]
Attorneys for Plaintiffs,
LaRose Industries, LLC d/b/a Cra-Z-Art